

**STATE OF MISSOURI
MISSOURI BOARD OF PHARMACY**

IN RE:)	
)	
MIKE STUART ENTERPRISES, INC.)	Complaint No. 2020-004011
dba LAKELAND PHARMACY #3)	
Permit No. 2006027988)	
104 Cortney Lane)	
Crane, MO 65633)	

**SETTLEMENT AGREEMENT BETWEEN
STATE BOARD OF PHARMACY AND MIKE STUART
ENTERPRISES, INC. dba LAKELAND PHARMACY#3**

COME NOW Mike Stuart Enterprises, Inc. dba Lakeland Pharmacy #3, 104 Cortney Lane, Crane, MO 65633 ("Respondent" or "Pharmacy") and the Missouri Board of Pharmacy ("Board" or "Petitioner") and enter into this Settlement Agreement for the purpose of resolving the question of whether Respondent's permit to operate as a pharmacy will be subject to discipline.

Pursuant to the terms of Section 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") and, additionally, the right to a disciplinary hearing before the Board under Section 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondent acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges against it proved upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against it; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against it and, subsequently, the right to a disciplinary hearing before the Board at which time it may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against its

permit. Being aware of these rights provided it by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to it.

Respondent acknowledges that it has received a copy of the draft complaint to be filed with the Administrative Hearing Commission, the investigative report, and other documents relied upon by the Board in determining there was cause for discipline against Respondent's permit.

For purposes of settling this dispute, Respondent stipulates that the factual allegations contained in this Settlement Agreement are true, stipulates with the Board that Respondent's permit as a pharmacy, numbered 2006027988, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo.

JOINT STIPULATION OF FACTS

1. The Board is an agency of the State of Missouri created and established pursuant to §338.110, RSMo¹, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

2. Respondent Mike Stuart Enterprises, Inc. dba Lakeland Pharmacy #3, 104 Cortney Lane, Crane, MO 65633, is permitted by the Board under permit number 2006027988. Respondent's permit was at all times relevant herein current and active.

3. On or around December 10, 2020, pharmacist-in-charge (PIC) Cori Dykes contacted the Board by phone to advise that the Pharmacy had discovered shortages of Schedule II controlled substances. The Pharmacy suspected former technician B.M. was responsible for the losses.

¹ All statutory references are to the Revised Statutes of Missouri 2016, as amended, unless otherwise stated.

4. Technician B.M. resigned from employment with the Pharmacy on October 30, 2020 after being given the option of resigning or being terminated for conduct unrelated to drug diversion.

5. Technician B.M. was asked to resign or be terminated due to missing too many work days, tardiness, and removing food, clothing, and over-the-counter medications from the Pharmacy without paying for them.

6. The Pharmacy filed a report of the controlled substance losses with the Stone County Police Department and the DEA and BNDD.

7. The Board investigated the losses and performed an audit for the time period of May 20, 2020 to February 24, 2021 which revealed the following controlled substance losses:

Drug	Amount lost
Oxycodone IR 15mg tablets	2011
Oxycodone IR 30mg tablets	1000
Hydrocodone/Acetaminophen 10/325mg tablets	3970
Zolpidem 10mg tablets	280
Phentermine 37.5mg tablets	109

8. The Pharmacy agreed with the Board's audit and submitted amended losses to the DEA and BNDD for the hydrocodone/acetaminophen 10/325mg.

9. Prior to discovery of the losses, controlled substance orders were manually checked into the perpetual inventory on the computer by the pharmacy technicians at any computer terminal.

10. Manual adjustments to inventory could also be made on the computer terminals.

11. Prior to discovery of the losses, the technicians did not log off and log in when they changed work stations throughout the day. As a result, they worked under one another's computer

credentials.

12. Schedule II controlled substances were ordered "on demand" based on a sticker in a re-order book placed by any staff person. Although the PIC checked the orders before they were placed, she primarily looked for high-cost items or excessive quantities.

13. The Pharmacy's records revealed discrepancies between amounts of oxycodone IR 15mg and 30mg and hydrocodone/acetaminophen 10/325mg received according to the invoices and the amounts logged into the computer inventory or not logged at all.

14. Technician B.M. worked on each of the days where discrepancies were noted.

15. The PIC's Controlled Substance Ordering System (CSOS) password for ordering Schedule II controlled substances was accessible to the pharmacy technicians so they could order when she was not present.

16. Technician B.M. admitted to removing food and over-the-counter items without paying for them.

JOINT CONCLUSIONS OF LAW

17. Cause exists for Petitioner to take disciplinary action against Respondent's pharmacy permit under 20 CSR § 2220-2.010(1)(H) and (O), which provides:

(H) Pharmacies must maintain adequate security in order to deter theft of drugs by personnel or the public. Sufficient alarm systems or locking mechanisms must be in place if the pharmacy is located in a facility into which the public has access and the pharmacy's hours of operation are different from those of the remainder of the facility.

* * *

(O) When a pharmacy permit holder knows or should have known, within the usual and customary standards of conduct governing the operation of a pharmacy as defined in Chapter 338, RSMo, that an employee, licensed or unlicensed, has violated the pharmacy laws or rules, the permit holder shall be subject to discipline under Chapter 338, RSMo.

18. Cause exists for Petitioner to take disciplinary action against Respondent's pharmacy permit under §338.210.5, which states:

5. If a violation of this chapter or other relevant law occurs in connection with or adjunct to the preparation or dispensing of a prescription or drug order, any permit holder or pharmacist-in-charge at any facility participating in the preparation, dispensing, or distribution of a prescription or drug order may be deemed liable for such violation.

19. Cause exists for Petitioner to take disciplinary action against Respondent's pharmacy permit under §338.055.2 (6) and (15), RSMo, which states, in pertinent parts:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

JOINT AGREED DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Section 621.045.1, RSMo:

A. Respondent's license, License No. 2007038408, is hereby **PUBLICLY CENSURED**.

B. The terms of this Settlement Agreement are contractual, legally enforceable, binding, and not merely recitals. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

C. Respondent hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs, and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. §1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

**RESPONDENT, AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE
LINE,**

 REQUESTS
 X **DOES NOT REQUEST**

**THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS
SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING RESPONDENT'S
LICENSE AS A PHARMACY.**

The parties to this Agreement understand that the Board of Pharmacy will maintain this Agreement as an open record of the Board as provided in Chapters 324, 338, 610, RSMo.

If Respondent has requested review, Respondent and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Respondent's permit and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Respondent's permit. Effective fifteen (15) days from the date the Administrative Hearing Commission determines that the Settlement Agreement sets forth cause for disciplining Respondent's permit, the agreed upon discipline set forth herein shall go into effect.

If Respondent has not requested review by the Administrative Hearing Commission, the Settlement Agreement goes into effect fifteen (15) days after the document is signed by the Board's Executive Director.

RESPONDENT

MIKE STUART ENTERPRISES, INC.
dba LAKELAND PHARMACY #3

By: Michael L. Stuart
As Authorized Agent for
MIKE STUART ENTERPRISES, INC.
dba LAKELAND PHARMACY #3

Printed: Michael L. Stuart
Date: 1-21-2022

PETITIONER

MISSOURI BOARD OF
PHARMACY

By: Kimberly Grinston
Executive Director

Date: 1-26-2022

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